

MEMORANDUM OF LAW

DATE: March 17, 1986

TO: Ed Ryan, City Auditor and Comptroller

FROM: City Attorney

SUBJECT: Housing Commission, Non-Profit Corporations;
Duties and Responsibilities of
Auditor-Comptroller Concerning

By a memorandum dated March 10, 1986 to City Attorney John Witt, you asked for our views concerning your duties and responsibilities regarding:

- i) The Housing Commission;
- ii) The various non-profit corporations of which the City is the sole member and which, under contract, perform certain functions for the City. These presently are:
 - a) Center City Development Corporation;
 - b) San Diego Data Processing Corporation;
 - c) Southeast Economic Development Corporation, Inc.;
 - d) San Diego Convention Center Corporation, Inc.;
 - e) San Diego Facilities and Equipment Leasing Corporation.

In your memorandum you seem to imply that they are all non-profit corporations. That is not entirely correct. The Housing Commission is not a non-profit corporation. It is an arm of the San Diego Housing Authority, an agency created by State statute. You will shortly be receiving an analysis of your relationship and duties to that entity by a memorandum of law authored by Deputy City Attorney Harold Valderhaug. This memorandum will address only the issue of your relationship and duties to the non-profit corporations set forth above.

All of the corporations perform certain functions for the City under operating agreements which were conceived and drafted by staff of this office. The agreements contemplate that the corporation will perform these functions in accordance with a budget specifically approved by the City Council. Typically the agreements provide:

Section 1.02 Statement of Revenues and Expenses

"Statement of Revenues and Expenses" means an exact accounting, prepared in accordance with the accounting

procedures employed in formulating the Proposed Budget, of all the revenues and expenses of the Corporation during any fiscal year.

Section 1.03 Proposed Budget

"Proposed Budget" means a statement prepared by Corporation of the estimated revenues and expenditures of Corporation during any fiscal year. It shall be prepared in such form as City may required.

In addition to anything else which Corporation may deem pertinent, the proposed budget shall contain:

- (i) Corporation's recommendations regarding the steps which must be taken in order to provide for the maintenance, operation, expansion and improvement of Facilities hereafter acquired by Corporation;
- (ii) Corporation's estimate of the costs which may reasonably be expected to result from the adoption of any or all of Corporation's recommendations pursuant to clause (i) of this section; and
- (iii) A statement of the means (including operating revenues) which Corporation suggests be used in paying for the cost of adopting any or all of Corporation's recommendations pursuant to clause (i) of this section.

Section 1.05 Approved Budget

"Approved Budget" means that budget which, following submission by Corporation of the proposed budget, City,

in its unlimited discretion, approves for the Corporation for the respective fiscal year.

Section 2.07 Covenant to Render an Accounting and Furnish Financial Reports

(a) Corporation covenants that it shall maintain full and complete accounting records and systems utilizing the standard classification of accounts, and using generally accepted accounting standards.

On or before the 15th day of each month, Corporation shall prepare and shall file with City an income and expense statement showing results of operations for the preceding month. All books and records shall be open to inspection to City or its representatives.

(b) Corporation covenants that within one hundred twenty (120) days after the close of each fiscal year of Corporation, it shall submit to City a Statement of Revenues and Expenses of such fiscal year and shall

furnish to City detailed certified reports of an audit based on an examination in accordance with generally accepted auditing standards, prepared by an independent auditing firm acceptable to City, covering the operations of Corporation for such fiscal year and showing the revenues and expenses for such period.

(c) If at the end of any fiscal year of Corporation, amounts actually received by Corporation during such year exceed expenditures, including authorized reserves of contingency items, Corporation shall, no later than ninety (90) days after the close of such fiscal year, pay over such excess to City's treasurer or otherwise dispose thereof as City may direct.

(d) Corporation covenants that it will allow City officials complete access to all personnel, and operational and financial records and data pertaining to the services provided pursuant to this agreement.

Thus, it appears to us that your duties and responsibilities are substantially similar to those you have with respect to the departments of the City. As to specific expenditures, travel or otherwise, it seems to us that you may inquire if you deem it appropriate and/or necessary and report the results to the City

Council and that some general ongoing auditing review should be underway at all times. I trust this responds adequately to one portion of your question.

JOHN W. WITT, City Attorney

By

C. M. Fitzpatrick
Assistant City Attorney

CMF:js:559(x043.2)

ML-86-31